SUPREME COURT, U. S.
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In The

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1092

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AIRLINE DISTRICT LODGE 146, and JAMES R. HAGA, JR.,

Petitioners,

vs.

THE AIR LINE EMPLOYEES ASSOCIATION INTERNATIONAL UNION and JOHN MANCHESTER,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
To The Court of Civil Appeals For The Tenth Supreme Judicial District of Texas at Waco

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Respondents, John Manchester and The Air Line Employees International Union, file this Brief in Opposition to the Petition for Writ of Certiorari and respectfully pray that such writ be denied.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Is the state court pre-empted of jurisdiction over a defamation case which has been brought to collect damages sustained by complainants for malicious statements which were disseminated in reckless disregard of their truth or falsity?

2. Are libelous statements made during a labor representation dispute qualifiedly privileged or absolutely privileged?

COUNTER-STATEMENT OF THE CASE

Plaintiff Manchester is an officer and director of Plaintiff ALEA. Defendant Haga is an officer of Defendant IAM. During the summer of 1976, IAM and ALEA were involved in an election wherein IAM was challenging ALEA's position as the established union representative for certain airline workers. During IAM's "raid" of ALEA's membership, Haga, acting in concert and at the direction of IAM, published and disseminated to ALEA's membership a "fact sheet" which stated that a certain "ALEA Director was employed as a mechanic(?) with American Airlines . . . and was fired with serious charges, so serious . . . no grievance was filed . . .", and that "he tried to form an independent mechanics' union, but it was reported he stole away in the night with the funds" and that, further, "although he had never attended one negotiating session in his life, nor

had he ever served one day as a shop steward, he was hired by ALEA."

Plaintiffs filed their Original Petition in the Trial Court alleging that although Manchester's name was not mentioned within the fact sheet, it was obvious to the great majority of its membership that the person referred to therein was Manchester. Plaintiffs further alleged that Defendants knew that the information disseminated was false or that such information was distributed in reckless disregard for its truth. As such, the information was malicious and libelous to Plaintiffs and resulted in damages to their good name, reputation and business.

Prior to receiving evidence, the Trial Court dismissed Plaintiffs' cause of action on the grounds that jurisdiction was pre-empted by Federal Law and that the communications were absolutely privileged.

Relying on the rule announced in *Linn v. United Plant Guard Workers of America*, 383 U.S. 53 (1966), the Texas Court of Civil Appeals reversed the Trial Court on both the pre-emption and the privilege issues, finding that the Trial Court was not preempted of jurisdiction over cases involving malicious libel, and that such libelous statements were only qualifiedly privileged.

The Texas Supreme Court agreed with Appellate Court's decision by refusing to grant Defendants' Petition for Writ of Error.

In this petition, Plaintiffs are the Respondents and Defendants are the Petitioners.

REASONS FOR DENYING THE WRIT

1. The decision announced by the Texas Court of Civil Appeals was correct in establishing that cases of malicious libel are not pre-empted from state court jurisdiction by the Railway Labor Act 45USC §151-188.

In arriving at its decision, the court recognized the general rule that the pre-emption doctrine requires state court jurisdiction to be pre-empted when such courts are asked to regulate activities which are in the exclusive protection of the National Labor Relations Act or which arguably constitute an unfair labor practice. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). Even though not involved in the case at bar, the policies embraced in the National Labor Relations Act may be referred to in order to determine whether conduct is within the general penumbra of conduct held protected by the Railway Labor Act. *Brotherhood of Railway Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 384, 89 S.Ct. 1109, 1118, 22 L.Ed.2d 344 (1969).

However, as the appellate court recognized, the *Garmon* pre-emption doctrine is not absolute. On several occasions this court has recognized that an exception exists to the general pre-emption doctrine for malicious and injurious statements which are circulated during a labor dispute. *Linn v. United Plant Guard Workers*, 383 U.S. 53 (1966); *Old Dominion Branch #496, National Association of*

Letter Carriers v. Austin, 418 U.S. 264 (1974); *Farmer v. Carpenters*, 430 U.S. 290, 97 S.Ct. 1056 51 L.Ed.2d 338, 352 (1977). This Court, in rendering its landmark decision in *Linn*, found that malicious libel falls outside the protective ambit of the Act. Thus it was held that the exercise of state court jurisdiction in these instances would be merely a peripheral concern of federal policy in contrast to "an over-riding state interest in protecting its residents from malicious libels." *Linn*, 383 U.S. at 61.

Furthermore, the fact that defamation arises during a labor dispute does not give the National Labor Relations Board exclusive jurisdiction, since "malicious publication of libelous statements does not in and of itself constitute an unfair labor practice." *Id.* at 63. Hence, the injury of an individual's reputation is irrelevant to the Board's function. The Board cannot award damages, impose penalties, nor give any other relief to an individual defamed during an election contest. *Id.* at 63. "On the contrary, state remedies have been designed to compensate the victim and enable him to vindicate his reputation." *Id.* at 63-64.

As in the case at bar, which fits squarely within the *Linn* fact situation, when a plaintiff alleges that defendants have been guilty of malicious defamation, a state court has the power to deal with such conduct. See *Farah Mfg. Co. v. Amalgamated Clothing Workers*, 483 S.W. 2d 271 (Tex. Civ. App. — San Antonio 1972, no writ).

To allow such an exception does not intrude upon the ostensible federal policy of favoring uninhibited robust and wide-open debate in representation disputes. *Old Dominion Branch #494, National Association of Letter Carriers v. Austin*, 418 U.S. 264 (1974). For as the Texas appellate court remarked, the statement of federal policy in *Old Dominion* does not depart from the *Linn* rule as herein stated. *Manchester v. International Association of Machinists and Aerospace Workers*, 567 S.W.2d 623 (Tex. Civ. App. — Waco 1978, writ ref'd). And, as Respondent and this court have continually asserted, to create protection for intentional misrepresentations published with reckless disregard for their truth, would be to distort the intent of the pre-emption doctrine as laid down in *San Diego Building Trades*, and interpreted by *Old Dominion*.

By granting Petitioner's writ, this court would be considering an issue it laid to rest in *Linn*. Therefore, Respondent respectfully prays that the writ be denied.

2. The Texas Court of Civil Appeals correctly held that the libelous publications disseminated by the Petitioner are not absolutely privileged in the circumstances alleged by Respondents.

Federal Labor policies favor uninhibited, robust and wide-open debate in labor disputes and tolerate intemperate, abusive or insulting language. *Old Dominion*, 418 U.S. at 264. However, this Court has not permitted this policy to give either party to a

campaign license to intentionally injure others by circulating defamatory or insulting material known to be false. *Linn*, 383 U.S. at 61. "It must be emphasized that malicious libel enjoys no constitutional protection in any context." *Linn* 383 U.S. at 63. Intentional defamation is not protected under the Act. *Farmers*, 430 U.S. at 302, 51 L.Ed.2d at 349. The decisions in *Old Dominion* and *Linn* are coexistent, for as the Texas Appellate Court remarked, "*Old Dominion* does not depart from the *Linn* rule hereinabove set out." *Manchester*, 567 S.W.2d at 626.

Since Federal labor laws do not protect defamatory statements which are published with knowledge of their falsity or with reckless disregard for the truth, such statements are only qualifiedly privileged. *Linn*, 383 U.S. at 53; *Old Dominion*, 418 U.S. at 264. Without an absolute protection for malicious libel, an inquiry is permitted into the motive and reasonableness of the statements. Thus, as in the instant case, a cause of action exists, over which State Courts have jurisdiction. See *Farah Mfg.* 483 S.W. 2d at 271.

With this in mind, the appellate court correctly held that when the accusations made by Petitioner that Respondent Manchester, "stole away in the night with the union funds" are coupled with allegations that Petitioner had knowledge of their falsity or were in reckless disregard of their falsity, the instant case is squarely within the rule announced by *Linn*. "Any privilege connected with the libelous statements would at best be qualified and not absolute." *Manchester*, 567 S.W.2d at 626.

CONCLUSION

In rendering the *Linn* decision, this court laid to rest the troublesome and recurring question involving the extent to which the National Labor Relations Act supercedes state law with respect to libel published during labor disputes.

The same question is presented here by Petitioner and need not be re-examined. This court has consistently held that state courts have jurisdiction to apply state remedies if the complainant pleads and proves the libelous statements were injurious and malicious.

The guidelines established by *Linn* are clear and enduring. Its vitality has been strengthened by this court's recent decisions in *Old Dominion* and *Farmer*. Petitioner does not present any new conflicts in social policy which would necessitate this court's reconsidering its above mentioned prior decisions.

Therefore, Respondent respectfully prays that Petitioner's Writ of Certiorari be denied.

Respectfully submitted,

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